

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 703-5050



April 19, 2006

Merle Bailey, President
Tooleville Mutual Non-Profit Water Assn., Inc.
P.O. Box 579
Exeter, CA 93221

Re: Public Works Case No. 2005-042
Tooleville Mutual Non-Profit Water Assn., Inc.

Dear Mr. Bailey:

This is to respond to your request dated December 5, 2005 for a public works coverage determination regarding the meaning of uncodified special law "Sections 29 and 30" (Stats. 2005, ch. 383, §§ 29 and 30, pp.17-18) as they might apply to potential future water projects undertaken by the chartered city of Exeter. After careful consideration of your request, I regretfully must decline to opine on this subject. Your request would require me to analyze the meaning of this special law outside the context of a fact specific construction project and, for the reasons explained below, it is therefore not the proper subject of a public works coverage determination.

You have advised that Tooleville Mutual Non-Profit Water Association, Inc. owns and operates a public water system, whose water is unpotable because of severe contamination. Therefore, Tooleville plans to construct a pipeline to bring in uncontaminated water from nearby Exeter. The proposed pipeline would connect Tooleville to Exeter's water system; in exchange, Exeter would charge Tooleville a usage fee.

With assistance from Self-Help Enterprises, a local non-profit organization devoted to improving living conditions in rural communities, Tooleville has applied for State and Federal grants to fund the construction of the pipeline. Self-Help, on behalf of Tooleville, acknowledges that, assuming this public funding, the pipeline construction project is clearly a public work within the meaning of Labor Code section 1720(a) and therefore subject to the payment of prevailing wages.¹

¹By letter dated January 13, 2006, Julie Sinistore of Self-Help writes: "There is no question in our mind that this project is a public work and that Prevailing wages will need to be paid if Federal funding through the State Department of [H]ealth [S]ervices administered Drinking Water State Revolving Fund Program finance this project."

Exeter, a chartered city, fears that if it agrees to supply water to Tooleville via the proposed pipeline, it will lose its chartered city exemption with regard to future water system projects or improvements it may elect to undertake.

Effective January 1, 2006, the Legislature passed Senate Bill 1110, which contains an uncodified special law in sections 29 and 30 relevant to Exeter's concern over losing its chartered city exemption. In pertinent part, it provides that the provision of water services to disadvantaged communities, alone, shall not cause Exeter to lose any applicable exemptions it has to general law. Before Exeter agrees to supply Tooleville with water or to allow Tooleville to construct the pipeline, Exeter wants assurances that to do so will not jeopardize its chartered city exemption as it concerns the applicability of prevailing wage laws to its future improvement projects.

The Director of Industrial Relations is vested with the authority² to make public works coverage determinations. Interested parties may submit requests to determine coverage "regarding either a specific project or type of work to be performed" (Cal. Code Regs., tit. 8, § 16001(a)(1).) Coverage determinations are made on a case-by-case basis with regard to the unique facts and particular circumstances of each project. Such case-specific facts (e.g., a construction contract, a scope of work, bid documents, specific budget or funding information) would need to be analyzed to determine whether the particular project at issue is a public work and, if so, whether it is exempt from prevailing wage requirements under the constitutional exemption for chartered cities. The Department cannot opine regarding future, hypothetical projects that lack a factual context.

The Office of the Attorney General is vested with the authority and expertise to provide general legal opinions concerning the meaning of California law. Therefore, you may wish to ask the Office of the Attorney General to address your questions as to the general meaning of the uncodified special law contained in sections 29 and 30 of Senate Bill 1110 particularly as it concerns a chartered city's exemption for "municipal affairs" under the California Constitution. The website for the Attorney General's office, <http://ag.ca.gov/opinions/faq.htm>, provides instructions for how to request a legal opinion.

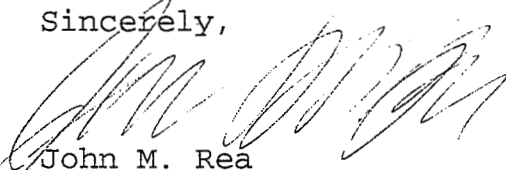
Please note that the Department maintains an on-line database of its precedential public works coverage decisions at www.dir.ca.gov/DLSR/PrecedentialAlpha.htm. Although none of the precedential decisions analyzes sections 29 and 30, there are several opinions discussing the issue of the chartered city

² See *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.

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exemption in the context of a specific public works project, including PW 93-029, *City of Big Bear Waterline Reconstruction Project* (10/21/94). The Department recently obtained an unpublished Fifth District Court of Appeal decision in *City of Modesto v. Department of Industrial Relations*, which also addresses the chartered city exemption.³ There are also a number of published California court cases involving water supply projects sponsored by chartered cities. See, e.g., *City of South Pasadena v. Pasadena Land & Water Co.* (1908) 152 Cal. 579; *City of Pasadena v. Chamberlain* (1928) 204 Cal. 653; *City of Pasadena v. Charleville* (1932) 215 Cal. 384 [overruled on other grounds by *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566]; *Durant v. City of Beverly Hills* (1940) 39 Cal.App.2d 133. We hope these authorities will be useful to you.

Sincerely,



John M. Rea
Acting Director

Attachments

cc: The Honorable Juan Arambula (California Assembly)
Paul Boyer (Self-Help Enterprises)
John Kunkel (Exeter)
Jerry Swoyer (Dept. of Health Services)

³ Copies of the precedential decision in *Big Bear* and the unpublished Court of Appeal decision in *Modesto* are attached for your reference.